

The Jewish Lawyer's Question*

by Russell G. Pearce**

The Baal Shem¹ handed [the Maggid of Mezeritch] the Book of splendor, the Zohar: "Can you read?"—"Yes."—"Well then, read!" The Maggid obeyed. "That is not the way one reads," the Baal Shem interrupted. "I can see you know how to decipher the signs, but your knowledge lacks soul."²

Introduction

Martin Buber describes the question of how to "affirm[]" our Jewish identity in the modern world as "the personal Jewish question, the root of all Jewish questions, the question we must discover within ourselves, clarify within ourselves, and decide within ourselves."³ This essay raises the "Jewish question" for lawyers. First, it explores some reasons why Jewish lawyers answer the question by separating their professional selves from their religious selves. Second, it observes that such an answer is contrary to the perspective—rooted in tradition but also common to the otherwise dissonant streams of Judaism today—that one's Judaism enters every moment of your life. Last, the essay suggests that this perspective encourages Jewish lawyers, somewhat incongruously, to reject the established professional attitude toward role, while at the same time to pursue substantive values compatible with those of our legal system.

* MARTIN BUBER, ON JUDAISM 19 (Nahum N. Glatzer ed., 1967) (referring to the "personal Jewish question").

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1. The "Baal Shem" refers to Rabbi Israel Baal Shem Tov, the founder of the Hasidic movement in Judaism. See ELIE WIESEL, SOULS ON FIRE 3-39 (Marion Wiesel trans., 1972); see also LOUIS JACOBS, HASIDIC PRAYER 1-16 (1993). The phrase "Baal Shem Tov" literally means "Master of the Good Name." WIESEL, *supra*, at 3.

2. WIESEL, *supra* note 1, at 55.

3. MARTIN BUBER, ON JUDAISM 19 (Nahum N. Glatzer ed., 1967) (referring to the "personal Jewish question").

I. THE APPEAL OF PROFESSIONAL VALUES LARGELY SEPARATE FROM JEWISH IDENTITY

As a lawyer and a teacher of lawyers and law students, my experience has been that Jewish lawyers are even more uncomfortable than Christian lawyers with the possibility that their legal practice might have a religious dimension. Last Spring, for example, I had the opportunity to help lead an Auburn Theological Seminary program for Jewish and Christian lawyers on the role of religion in a lawyer's work. At the first session, the lawyers received text sources and heard talks from a leading Christian theologian and a prominent Rabbi on religious perspectives on professional role. I then separated the lawyers into a Christian group and a Jewish group and asked them to construct a religious concept of the lawyer's professional role. The Christian lawyers debated whether the concepts of vocation and calling applied to their work. Despite explicit guidance from the Rabbinic speaker, the Jewish lawyers ignored the religious implications of their practice. Instead, they focused on how their minority status and the resulting experience of discrimination influenced their approach to lawyering, including their commitment to rule of law and social justice.

A similar, but less stark, contrast exists within mainstream legal scholarship on Jewish lawyering. What it means to be a religious lawyer has been the exclusive focus of commentators examining what it means to be a Christian lawyer, such as Joseph Allegretti⁴ and Thomas Shaffer.⁵ In contrast, commentators examining what it means to be a Jewish lawyer, such as Sanford Levinson,⁶ Jerome Hornblass,⁷ and myself,⁸ are much more likely to include nonreligious considerations when examining what it means to be a Jewish lawyer. All three acknowledge an ethnically Jewish perspective. Both Levinson and I suggest the possibility of a Jewish lawyer having an ethnically Jewish identity related tangentially, if at all, to religious identification. Levinson further considers the possibility of Jewish identity as only a "demographic measure."⁹

When I began to reflect on these differences, I realized that I too for many years had avoided confronting the consequence of my religious belief for my legal work. As a law clerk, associate at a Wall Street firm, legal

4. Joseph Allegretti, *Christ and the Code: The Dilemma of the Christian Attorney*, 34 CATH. LAW. 131 (1988).

5. THOMAS L. SHAFFER, ON BEING A CHRISTIAN AND A LAWYER: LAW FOR THE INNOCENT (1981).

6. Sanford Levinson, *Identifying the Jewish Lawyer: Reflections on the Construction of Professional Identity*, 14 CARDOZO L. REV. 1577 (1993).

7. Jerome Hornblass, *The Jewish Lawyer*, 14 CARDOZO L. REV. 1639 (1993).

8. Russell G. Pearce, *Jewish Lawyering in a Multicultural Society: A Midrash on Levinson*, 14 CARDOZO L. REV. 1613 (1993).

9. Levinson, *supra* note 6, at 1587.

services lawyer, and general counsel to a governmental civil rights agency, I had only a vague sense of the connection between my Judaism, my pro bono and public interest choices, my integrity, and my treatment of co-workers and adversaries. Despite my belief that Judaism entered all areas of my life, I did not begin to think systematically or in depth about the implications of Judaism for law practice until I became a law professor and I read Joseph Allegretti's and Thomas Shaffer's scholarship on Christian lawyering.¹⁰

Although a major reason for this distinction is the very existence of a readily perceived Jewish, and not a Christian, ethnic identity,¹¹ I suspect that this factor is only part of a complex set of reasons why Jewish lawyers find appealing a concept of professional role which excludes or drastically limits the influence of religious identity on professional conduct. These include minority status, a history of discrimination, and the existence of modern Jewish religious and ethnic perspectives which would interfere little, if at all, with professional obligations.

A. The Professional Project's Liberating Appeal to a Religious Minority

Religious identification is problematic for all lawyers as a result of the "professional project," or the process of creating and maintaining professional role. Sanford Levinson has described how the "professional project [of law] . . . 'bleach[es] out' . . . merely contingent aspects of the self, including the residue of particularistic socialization that we refer to as our 'conscience.'"¹² As I have noted elsewhere, "[r]ule of law implies that the quality of lawyering and of justice an individual receives does not depend on the group identity of the lawyer or judge."¹³ Lawyers are to take a neutral approach to their work, free of external group identifications, including their religion.¹⁴ Under the professional project, lawyers are fungible.¹⁵ No distinction exists among Christian, Jewish, Moslem, Hindu, and Buddhist lawyers who are not to permit their religion to intrude on their professional role. Indeed, injecting religion into the lawyer's work contravenes the professional project. Professionalism suggests that "Jewishness play[] no role"¹⁶ in a lawyer's work.

The professional project's promise of neutrality affords Jews great comfort because of our minority status and history of discrimination. We

10. See *supra* notes 4-5.

11. Pearce, *supra* note 8, at 1630 n.115.

12. Levinson, *supra* note 6, at 1578.

13. Pearce, *supra* note 8, at 1629.

14. *Id.* at 1628-29.

15. Levinson, *supra* note 6, at 1579.

16. *Id.* at 1594.

are 2.5% of the United States population.¹⁷ In a legal system where the participants acted on their personal affiliations, rather than their duty to the legal system, we would be losers. We would only obtain justice at the majority's sufferance, not as a matter of right.

Equally important to Jewish lawyers is the professional project's promise of equal treatment to all individual lawyers. During the twentieth century, leaders of the bar and members of the public have stereotyped Jewish lawyers as "'overly aggressive hired guns,'" ¹⁸ adopting unethical "'gutter'" tactics,¹⁹ lacking in character,²⁰ and "'Oriental in [their] fidelity to the minutiae of the subject without regard to any controlling rule or reason.'" ²¹ Extensive hiring discrimination against Jewish lawyers was documented as late as the 1960s²² and stereotypes of Jewish lawyers, both positive and negative, persist today.²³

While stereotypes and discrimination have coexisted with the professional project, the project offers as an ideal a vision of a profession where individuals are judged solely on their merits, not by virtue of their group identification. The project promised to liberate us from stereotypes and discrimination. Indeed, today, despite the persistence of some stereotypes, this promise seems to have been largely realized. The number of Jewish lawyers significantly exceeds our percentage of the population and many Jewish lawyers are among the profession's elite.²⁴ Jerold S. Auerbach, the historian who has most thoroughly documented the history of anti-semitism in the legal profession, recently noted "the astonishing success story of Jewish lawyers, as they erased the stigma of professional ostracism"²⁵

Auerbach suggests yet another explanation for the attachment of Jewish lawyers to the ideas embodied in the professional project. He suggests that "[e]specially for Jews, American law offered enticing rewards, beyond financial security and professional status."²⁶ For immigrant Jews, the

17. Pearce, *supra* note 8, at 1635.

18. Levinson, *supra* note 6, at 1588 (quoting Robert E. Roser, *Jews and Corporate Legal Practice* 13 (Nov. 1991) (unpublished manuscript, on file with author)); *see also* JEROLD S. AUERBACH, *UNEQUAL JUSTICE: LAWYERS AND SOCIAL CHANGE IN MODERN AMERICA* 50 (1976).

19. AUERBACH, *supra* note 18, at 127 (quoting Henry S. Drinker, the leading legal ethicist of mid-twentieth century, describing "'Russian Jew boys'").

20. *Id.* at 121-27.

21. *Id.* at 107. The author of this multiply objectionable statement is Chief Justice Harlan Stone.

22. *See generally* Note, *The Jewish Law Student and New York Jobs—Discriminatory Effects in Law Firm Hiring Practices*, 73 YALE L.J. 625 (1964).

23. Levinson, *supra* note 6, at 1588.

24. CHARLES E. SILBERMAN, *A CERTAIN PEOPLE: AMERICAN JEWS AND THEIR LIVES TODAY* 96-97 (1985).

25. JEROLD S. AUERBACH, *RABBIS AND LAWYERS: THE JOURNEY FROM TORAH TO CONSTITUTION* ix (1990).

26. *Id.* at xix.

practice of law was the ultimate opportunity for assimilation as an American. In some sense, lawyers were the definitive "good Americans."²⁷ They "interpret the traditions and explicate the rules of American society," and serve as the "respected custodians of American culture."²⁸ Auerbach further asserts that in service of assimilation Jewish lawyers "replaced . . . their own sacred-law tradition . . . with the rule of American law."²⁹

Each of these perspectives may help explain why on some levels the professional project and its promise of a nonreligious role morality offers attractions to Jewish lawyers beyond those offered majority Christian lawyers.

B. The Availability of Jewish Identities Compatible with Professional Role

Complementing the appeal of the professional project is the ready availability of Jewish identities that interfere little, if at all, with professional role. They offer the Jewish lawyer the opportunity to identify as both a Jew and a good professional.

Although the absolutist version of the professional project excludes all extra-professional identifications, a more nuanced version permits commitments which do not interfere significantly with the substantive obligations of professional role. Sanford Levinson's use of the example of Sandy Koufax's refusal to pitch in the World Series on Yom Kippur is instructive on this point. If the influence of Koufax's religion was limited to when he pitched and not how he pitched, it only interfered with his professional role to a limited extent.³⁰ A pitcher who does not pitch on one day when the interests of his team would otherwise require it breaches his professional obligations, but far less so than if his religion required him to depart from professional norms on a day-to-day basis.

A Jewish lawyer could similarly be Jewish in ways which would not disturb the core of professionalism. One way is nonreligious. In part, this could stem from Jewishness as an ethnic, rather than religious, identification. Louis Brandeis chose to advocate on behalf of Jewish communal interests and economic justice, and Jack Greenberg to advocate for the

27. *Id.*

28. *Id.*

29. *Id.* Auerbach argues that leading Jewish lawyers, such as Louis Brandeis, Louis Marshall, and Felix Frankfurter, created an American Jewish culture that, in a corruption of Jewish tradition, equated American values with Judaism. *Id.* at xviii-xix. While Auerbach offers a wealth of valuable and original insights, his passionate commitment to his view as the only truly Jewish one unfortunately leads him to caricature those with different views.

30. Levinson, *supra* note 6, at 1582-83.

rights of African-Americans, from commitments derived from a desire not only to end the oppression of Jews but to realize a world where equal justice was available to all.³¹ The Jewish lawyers at the Auburn Theological Seminary program I described above similarly attributed the commitment of Jewish lawyers to rule of law and equal justice to their experience of discrimination and not to their religious beliefs.³²

These ethnic Jewish identifications may influence the causes Jewish lawyers adopt, but do not otherwise influence how a lawyer engages in practice. Ethnicity could of course have broader implications, much the same way some commentators have suggested a feminist style of lawyering.³³ But excluding stereotypes, the only ethnically Jewish approaches to lawyering thus far suggested have been the limited ones described here.

A parallel variety of Jewish religious approaches to lawyering similarly interfere minimally with the professional project. While Helen Neuborne and Joseph Rauh join Brandeis and Greenberg in viewing their lawyering for social justice as the product of their Jewishness, Neuborne and Rauh recognize the Jewish religious content of their commitment.³⁴ As with Jewish ethnicity, the choice of causes on religious grounds would not interfere with how one practiced law. A similarly limited conception of religious lawyering would involve observing Jewish holy days or other ritual, like Sandy Koufax, "[b]ut [l]eav[ing] the [i]nternal [n]orms of [l]egal [p]ractice [u]ntouched."³⁵

C. Religious Influences Facilitating the Professional Project

The absence of express religious authority on the lawyer's role and the presence of religious perspectives compatible with the project also facilitate the Jewish lawyer's adherence to the professional project.

While Judaism does have a tradition of great judges who have a duty to develop a full and fair record, it lacks a developed or formal ethic for the specific role of a lawyer.³⁶ Parties generally represented themselves before a Jewish court.³⁷ Levinson observes that the opposition of the great

31. Pearce, *supra* note 8, at 1618, 1622.

32. See *supra* p. 2.

33. See, e.g., Naomi R. Cahn, *A Preliminary Feminist Critique of Legal Ethics*, 4 GEO. J. LEGAL ETHICS 23 (1990); Carrie Menkel-Meadow, *Portia in a Different Voice: Speculations on a Women's Lawyering Process*, 1 BERKELEY WOMEN'S L.J. 39 (1985); see also Pearce, *supra* note 8, at 1626, 1631.

34. Pearce, *supra* note 8, at 1619-20.

35. Levinson, *supra* note 6, at 1594.

36. BASIL F. HERRING, *JEWISH ETHICS AND HALAKHAH FOR OUR TIME: SOURCES AND COMMENTARY* 99 (1984); Levinson, *supra* note 6, at 1597.

37. Dov I. Frimer, *The Role of the Lawyer in Jewish Law*, 1 J. L. & REL. 297, 301-03 (1983); Levinson, *supra* note 6, at 1598.

medieval Jewish scholar Maimonides to the practice of law resulted from his view that a lawyer was "a legal manipulator—an artful 'arranger'—concerned less with absolute fidelity to the law than with crafting ostensibly legal arguments that would enable the client to prevail against an adversary."³⁸ A seventeenth century rabbi similarly condemned lawyers for "leading to argumentation and strife, deception and the adoption of false argumentation to justify the wicked and defame the righteous."³⁹ Although Jewish courts have permitted lawyers since the middle ages, only in 1960 did the Israeli rabbinate "formally accept[] 'practices permitting legal counsel to argue on behalf of either litigant. . . .'"⁴⁰

The Jewish tradition's general hostility to an adversarial role appears to have an ironic result. The tradition offers little specific guidance for the modern lawyer who practices in an adversarial system. Absent a developed or formal code of Jewish legal ethics, a Jewish lawyer may therefore adopt the values of the professional project without confronting any contrary religious authority directly on point to the lawyer's role.

At the same time, two common modern versions of Judaism facilitate observance of the professional project. One version separates the public from the religious. Martin Buber describes how "[m]odern thinking" results in versions of religion where "one participates in religious services without hearing the message commanding him to go out into the world."⁴¹ One manifestation of this trend in Judaism has been "the development of a pure ritualism" which accepts "observance of certain prescribed forms" as the fulfillment of the covenant.⁴² The modern versions of Judaism which emphasize "pure ritualism" or other forms which reject the command "to go out into the world" permit the Jewish lawyer to subscribe to the professional project or some limited religiosity compatible with the project.

Another very different version of Judaism identifies the religious with the public. This version involves going "out into the world," but in so doing identifies American values, including the professional project, as being identical with Jewish values. Jerold Auerbach argues that as leaders of the American Jewish community, lawyers such as Louis Brandeis, Felix Frankfurter, and Louis Marshall helped create a "synthesis of Judaism and Americanism."⁴³ This synthesis "identifi[ed] Judaism with Americanism,

38. Levinson, *supra* note 6, at 1598-99.

39. *Id.* at 1599.

40. *Id.* at 1600.

41. BUBER, *supra* note 3, at 112.

42. *Id.* at 129.

43. Auerbach, *supra* note 25, at xviii.

within a common tradition that emphasized the rule of law and the quest for social justice."⁴⁴

II. JUDAISM DEMANDS A PLACE IN PROFESSIONAL PRACTICE

In his essay *The Holy Way: A Word to the Jews and to the Nations*,⁴⁵ Martin Buber declares the "[m]odern thinking" embodied in professionalism's separation of the religious self from the professional self to be "totally un-Jewish."⁴⁶ In contrast to the professional ideal, "[t]he world of true Judaism is the world of a unified life on earth."⁴⁷ Buber observes that "[m]an can do justice to the relation to God that has been given to him only by actualizing God in the world in accordance with his ability and the measure of each day, daily."⁴⁸ The separation of work from religion, like the separation of "holiness-through-works [from] holiness by grace," is "alien" to Judaism.⁴⁹

In this regard, Buber's observation has roots in traditional Jewish thinking. Godly actions have been a necessary part of being a religious Jew. The portion of the Torah called *The Life of Holiness*⁵⁰ enjoins Jews to be holy as God is holy,⁵¹ and requires, among other things, that you leave "the gleanings of your harvest . . . for the poor and the stranger,"⁵² "[l]ove your neighbor as yourself,"⁵³ and treat "[t]he stranger who resides with you . . . as one of your citizens."⁵⁴ Similarly, the prophets remind us that faith and prayer alone are not sufficient service to God. The Prophet Isaiah, for example, told the people that God would not listen to their prayers until they began to "[d]evote yourselves to justice; [a]id the wronged[;] uphold the rights of the orphan; [and d]efend the cause of the widow."⁵⁵

The understanding of Judaism as a way of life is common to the diverse strains of modern Jewish thought. According to eminent Reform Jewish theologian Rabbi Leo Baeck, a Jew "directs him[- or her-] self toward God in such a way that no part of his [or her] life is without this

44. *Id.* at 17.

45. BUBER, *supra* note 3, at 108-48.

46. *Id.* at 112.

47. *Id.*

48. MARTIN BUBER, *I AND THOU* 163 (Walter Kaufman trans., 1970).

49. BUBER, *supra* note 3, at 111.

50. W. GUNTHER PLAUT ET AL., *THE TORAH: A MODERN COMMENTARY* 889-900 (1981) (with Haftarat) (commenting on *Leviticus* 19:1-37). Unless otherwise indicated, all subsequent citations to the Bible are to this version.

51. *Leviticus* 19:2.

52. *Leviticus* 19:9-10.

53. *Leviticus* 19:18.

54. *Leviticus* 19:34.

55. *Isaiah* 1:15-17.

center, without this contact."⁵⁶ The great Conservative theologian Rabbi Abraham Joshua Heschel similarly taught that "[t]he meaning of redemption is to reveal the holy that is concealed, to disclose the divine that is suppressed. Every [person] is called upon to be a redeemer, and redemption takes place every moment, every day."⁵⁷ The eminent Orthodox scholar Rabbi Joseph B. Soloveitchik also instructed that the Halakhah "penetrates into every nook and cranny of life. The marketplace, the street, the factory, the house, the meeting place, the banquet hall, all constitute the backdrop for the religious life."⁵⁸

Jewish tradition therefore contains the framework for a version of Jewish lawyering radically different in premise from that underlying the professional project.

III. ANSWERING THE JEWISH QUESTION

Within the Jewish community, I take an expressly pluralist perspective. As a Reform Jew, I respect "the right of individual Jews to make the final decision as to what constitutes Jewish belief and practice for them."⁵⁹ In that spirit, and following the teaching that Judaism is a way of life, I offer my own answer-in-progress to the Jewish question. The answer is at once both directly contrary to, and substantially compatible with, the prevailing conception of the lawyer's role.

In the epigram to this essay, the Baal Shem Tov reproaches his student the Maggid of Mezeritch for reading without "soul." If one can read with soul, one can surely lawyer with "soul." As Abraham Joshua Heschel taught, "[i]t is not enough to do the mitzvah; one must *live* what he *does*. . . . When the soul is dull, the mitzvah is a shell."⁶⁰ Heschel describes the integration of soul into act as Kavvanah, "direction to God. . . . It is the act of bringing together the scattered forces of the self; the participation of heart and soul, not only of will and mind."⁶¹ Interestingly, Heschel expressly calls for us to bring God into the legal system. He writes that

56. Rabbi Alexander Schindler, Sermon on the Installation of Rabbi Sharon Kleinbaum at Congregation Beth Simchat Torah 9 (Sept. 11, 1992) (quoting Rabbi Leo Baeck).

57. ABRAHAM J. HESCHEL, BETWEEN GOD AND MAN: AN INTERPRETATION OF JUDAISM 80 (Fritz A. Rothschild ed., 1959).

58. RABBI JOSEPH B. SOLOVEITCHIK, HALAKHIC MAN 94 (1983).

59. 2 EUGENE B. BOROWITZ, REFORM JUDAISM TODAY: WHAT WE BELIEVE 13-14 (1977). This is not just a modern idea. Rabbi Burton L. Visotzky describes "[a]n early midrash on the Book of Exodus, commenting on the revelation at Mount Sinai, [which] suggests that when God's voice was heard by the six hundred thousand Israelites, each person heard God differently, in a voice appropriate to that person's needs." BURTON L. VISOTZKY, READING THE BOOK: MAKING THE BIBLE A TIMELESS TEXT 13 (1991).

60. HESCHEL, *supra* note 57, at 165-66.

61. HESCHEL, *supra* note 57, at 166.

"God will return to us when we shall be willing to let Him [into all parts of our lives, including] into our courts."⁶²

Such a kavvanah of lawyering demands a rejection of the professional project's separation of the professional from the religious self. As a Jewish lawyer, I would direct my heart toward God in every moment of my legal practice. This task requires study and prayer, but it also requires conduct. As Rabbi Leib, son of Sarah, taught, a Jewish lawyer (like all Jews) "should see to it that all his [or her] actions are a Torah."⁶³

But how exactly to fulfill this goal is far from clear. As discussed above, this lack of clarity results in part from Jewish tradition's hostility to a lawyer's zealous representation of a client. As a result, those who try to derive a Jewish ethic for a modern lawyer have to look beyond legal ethics to construct explanations of why adversarial legal conduct is appropriate. For example, in two of the few articles discussing Jewish approaches to legal ethics, Rabbis Alfred Cohen⁶⁴ and Gordon Tucker⁶⁵ examined the extent of a professional's duty of confidentiality when a client poses threat of harm to a nonclient. Both applied the principle that halakhah requires putting the interests of the community above that of the individual. In the application of this principle to the problem of confidentiality, their analysis diverged. Rabbi Tucker argued that the good of the community requires revealing confidences to protect a nonclient from physical or financial harm even though the individual client will suffer detriment.⁶⁶ In contrast, while advising consultation with halakhic authority, Rabbi Cohen asserted that "[i]t may be that maintaining professional secrecy is so absolutely integral to the proper function of that profession and the profession so essential to the welfare of society that the halacha would decide that the practitioner must maintain his professional secrets."⁶⁷

In legal ethics, therefore, as in many modern moral questions, the Jewish response is not self-evident.⁶⁸ For the Jewish lawyer, legal ethics becomes a subject for Jewish study and reflection. But while recognizing the vital importance of further study, we can find in our tradition foundational principles that on their face not only harmonize with, but require dedication to, the best aspirations of our legal system. Recognizing the risk

62. HESCHEL, *supra* note 57, at 166.

63. MARTIN BUBER, *TALES OF THE HASIDIM: THE EARLY MASTERS* 169 (Olga Marx trans., 1947).

64. Alfred S. Cohen, *On Maintaining a Professional Confidence*, 7 J. HALACHA & CONTEMP. SOC'Y 84 (1984).

65. Gordon Tucker, *The Confidentiality Rule: A Philosophical Perspective with Reference to Jewish Law and Ethics*, 13 FORDHAM URB. L.J. 99 (1985).

66. *Id.* at 106-07.

67. Cohen, *supra* note 64, at 84.

68. See, e.g., Louis E. Newman, *Introduction to REFORM JEWISH ETHICS & THE HALAKHAH: AN EXPERIMENT IN DECISION MAKING* xiii (Eugene B. Borowitz ed., 1994).

of oversimplifying our often complicated and sometimes contradictory tradition, I will tentatively suggest two such principles.

One principle is equal justice under law. The Torah's command "[j]ustice, justice, shall you pursue" requires the creation of a just legal system.⁶⁹ While the Torah was not speaking of a political system like our own, it does suggest attributes of justice that are applicable today. One such principle is equal justice under law. Decisions should "not favor the poor or show deference to the rich."⁷⁰ The "stranger who resides with you shall be to you as one of your citizens."⁷¹ Another such principle is concern for the poor and powerless. Proverbs instructs judges to "[o]pen thy mouth for the dumb"⁷² and "plead the cause of the poor and needy."⁷³

These principles suggest that the conduct of the Jewish lawyer in upholding the rule of law and in serving the poor could⁷⁴ be quite consistent with professional ideals. What differentiates this perspective from the simple equation of Jewish and professional values is that its foundation is Jewish values which may overlap with professional values, but will not necessarily do so.

So long as the Jewish lawyer seeks equal justice under law from a religious perspective, she will reject the professional project but not equal justice under law. As I have argued elsewhere, religious lawyering's rejection of the professional project does not necessarily undermine rule of law. Acceptance of personal identity rather than a professionally neutral role suggests a different way to think about realizing the goal. Instead of trying to "bleach out" difference, we should try to "create community" by speaking frankly about how to realize a legal system which results in

69. *Deuteronomy* 16:20.

70. *Leviticus* 19:15.

71. *Leviticus* 19:34. This notion is similar, but not identical, to our modern notions of equal treatment under law. Rabbi Bernard J. Bamberger notes that the "alien had equal rights under the law and also that he must refrain from the forbidden practices that would defile the land." PLAUT, *supra* note 50, at 899. Leading rabbinic sources construed this provision to apply only to converts. See, e.g., THE METSUDAH CHUMASH/RASHI Vayikro 19:33-34 (Rabbi Avrohom Davis trans., 1994) (using the word "proselyte" instead of "stranger" and including Rashi's commentary to the same effect). Rabbi Bamberger, however, asserts that the term "stranger" included both the proselyte and "the unconverted Gentile." PLAUT, *supra* note 50, at 899.

72. *Proverbs* 31:8 (Jewish Publication Society 1955). Unless otherwise indicated, all subsequent citations to *Proverbs* are to this version.

73. *Proverbs* 31:9. This instruction reflects a general concern for protecting the poor and weak. See, e.g., *Leviticus* 19:9-10 (requiring gleanings for the poor); *Isaiah* 1:15-17 (requiring assistance for the wronged, the orphan, and the widow); *Proverbs* 14:31 (teaching that "[h]e who oppresseth the poor blasphemeth his Maker; But he that is gracious unto the needy honoureth Him.").

74. I use the word "could" because of the potential for alternative readings of authoritative texts, see, e.g., *supra* note 71 and VISOTZKY, *supra* note 59, as well as alternative constructions of Judaism, see, e.g., *supra* note 59 and Pearce, *supra* note 8, at 1616 n.23.

equal justice given our differences and our similarities.⁷⁵ This indeed is very much the task of the Jewish lawyer. As Buber teaches, "holiness is true community with God and true community with human beings, both in one."⁷⁶

Conclusion

After the Baal Shem reproached the Maggid of Mezeritch for reading without soul, the Baal Shem began to read.⁷⁷ At that point, "[t]he room filled with light [and] [t]he Maggid stood at Sinai again."⁷⁸ Through understanding Judaism as a way of life, we may be able to answer the "Jewish question" in a way that furthers both our legal system's commitment to equal justice and enhances the spirituality of our actions. While it is far from clear how to fulfill these goals, our task begins with practicing mitzvot, acting with kavannah, and following the instruction of the eminent sage Rabbi Hillel to go and study.⁷⁹

75. Pearce, *supra* note 8, at 1636.

76. BUBER, *supra* note 3, at 111.

77. BUBER, *supra* note 63, at 100.

78. WIESEL, *supra* note 1, at 55.

79. VISOTZKY, *supra* note 59, at 240.